

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:TL-N-6419-00
CGMcLoughlin

date: APR 2 2001

to: Manager, Technical Support Section - Area 10, Group 6
Attn: Leola Casey

from: Associate Area Counsel (LMSB:DAL:2), Oklahoma City P.O.D. 2000-OKC

subject: Request for Advisory Opinion

Taxpayer:
EIN:

[REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the I.R.S. recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to I.R.S. personnel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on the I.R.S. and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Although we informally coordinated this matter with the National Office, the advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

DISCUSSION

We are responding to your November 15, 2000, memorandum requesting our advice on the application of interest netting under I.R.C. § 6621(d) to a claim filed by [REDACTED]. Specifically, you requested our views on whether interest netting is available if the 6-year statute of limitations under 28 U.S.C. §§ 2401, 2501 expired after filing a timely claim under Rev. Proc. 99-43, 1999-2 C.B. 579. As discussed, the expiration of the 28 U.S.C. §§ 2401, 2501 statute, following a timely claim filing, will not adversely affect a period's eligibility for interest netting.

Facts

[REDACTED] is the common parent for a group of corporations filing a consolidated return. On [REDACTED], [REDACTED] filed a claim for interest netting under Rev. Proc. 99-43. The claim listed the following three periods for which underpayment interest had been paid:

<u>Description</u>	<u>Tax Period</u>	<u>Interest Period</u>	<u>Amount</u>	<u>Paid</u>
Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tax	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Interest	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Interest	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Interest	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The claim also listed [REDACTED] instances in which [REDACTED], or one of its consolidated subsidiaries, received overpayments of tax¹, interest or penalties during the 6-year period prior to [REDACTED]. The list of overpayments included [REDACTED] instances in which the 6-year statute of limitations under 28 U.S.C. §§ 2401, 2501 would have expired on or before December 31, 1999. You have questioned whether these overpayments are available for interest netting, since the 28 U.S.C. §§ 2401, 2501 statutes of limitations for bringing suit have now expired.

¹ The claim listed income tax and windfall profits tax overpayments.

Analysis

Congress enacted I.R.C. § 6621(d) in 1998 to abolish the interest rate differential between underpayments and overpayments. I.R.C. § 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments. The provision generally applies to interest for periods beginning after July 22, 1998 (interest accruing on or after October 1, 1998).

However, the net interest rate of zero also applies to interest for periods beginning before July 22, 1998, (interest accruing prior to October 1, 1998) if certain conditions are met. Firstly, both periods of limitations applicable to the tax underpayment and to the tax overpayment must have been open on July 22, 1998. Secondly, the taxpayer must, on or before December 31, 1999, reasonably identify and establish the periods of tax underpayments and overpayments to which I.R.C. § 6621(d) will apply. Section 3301(c)(2), Restructuring and Reform Act of 1998 ("RRA"), 1998-3 C.B. 145, 201.²

In implementing these provisions, Sec. 4.02(1), Rev. Proc. 99-43, 1999-2 C.B. 579, 580, defines the applicable limitations period for underpayment interest as the 3-year or 2-year period for filing a claim under I.R.C. § 6511. Sec. 4.02(2), Rev. Proc. 99-43, 1999-2 C.B. 579, 580, defines the applicable limitations period for overpayment interest as the 6-year period in which a suit must be brought under 28 U.S.C. §§ 2401, 2501.

As you correctly point out, the 6-year statute of limitations under 28 U.S.C. §§ 2401, 2501 typically bars a taxpayer from obtaining additional overpayment interest. Rev. Rul. 57-242, 1957-1 C.B. 452; Alexander Proudfoot Co. v. U.S., 454 F.2d 1379, 1385 (Ct. Cl. 1972). Unlike other types of refund claims, the filing of a claim does not extend the period to bring an action for additional overpayment interest. Rev. Rul. 57-242, 1957-1 C.B. 452. If a taxpayer fails to bring suit within the 6-year statute of limitations, it will be precluded from obtaining the claimed additional overpayment interest. Id.

However, the Rev. Proc. 99-43 procedures for claiming interest netting are somewhat different. Although the 6-year statute of limitations under 28 U.S.C. §§ 2401, 2501 is used to determine if interest netting is available for a particular

² Rev. Proc. 99-43 modified these claim filing requirements where at least one of the applicable statute of limitations expires after December 31, 1999.

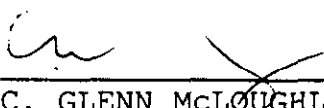
overpayment, the procedures do not require a suit to be brought within the normal 6-year statute of limitations. Instead, a taxpayer must simply file a timely claim for the interest netting within certain required time frames.

Where the statutes of limitations for both the underpayment interest and the overpayment interest were to expire on or before December 31, 1999, the taxpayer needed to file an interest netting claim by December 31, 1999. Rev. Proc. 99-43, 1999-2 C.B. 579, 580. If one of the statutes of limitations remained open until after December 31, 1999, the taxpayer only needed to file an interest netting claim by the date the last applicable statute of limitations expires. *Id.* at 580-581. Once a timely claim is filed, the taxpayer does not need to file suit within the normal 6-year statute to obtain interest netting for an overpayment.

Here, [REDACTED] took appropriate steps to perfect its interest netting claims on the overpayments. On [REDACTED], Oxy filed a claim listing the numerous overpayments for which the 6-year statute was to expire on or before December 31, 1999. Under Rev. Proc. 99-43, [REDACTED]'s interest netting claims for those periods are still valid even though the normal 6-year statutes of limitations have now expired.

Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions.

MARK E. O'LEARY
Associate Area Counsel

By: 
C. GLENN McLOUGHLIN
Senior Attorney

cc: AAC (LMSB:DAL:2)